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Message Text

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ACTION L-02

INFO OCT-01 EUR-12 ISO-00 SCCT-01 JUSE-00 SCA-01 CIAE-00

INR-07 NSAE-00 FBIE-00 /024 W
---------- 106405
P 260921Z MAR 75
FM AMEMBASSY PARIS
TO SECSTATE WASHDC PRIORITY 7855

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E.O. 11652: N/A
TAGS: CPRS, PFOR, FR
SUBJECT: EXTRADITION - HOLDER/KERKOW

REF: STATE 064558

1. EMBASSY IS AS DISTRESSED AS DEPARTMENT, ALTHOUGH LESS SURPRISED AT DEVELOPMENT OF HOLDER/KERKOW CASE. WE REGRET THAT DEPARTMENT DID NOT FEEL ITSELF ADEQUATELY INFORMED ON FRENCH JURISPRUDENCE, BUT WE REMAIN OF OPINION EXPRESSED IN OUR TELEGRAM 4436 THAT RESEARCH PROJECT THIS SUBJECT COULD NOT HAVE BEEN COMPLETED IN TIME TO BE OF USE. ADDITIONALLY, WE DOUBT THAT COURSE OF THIS CASE WOULD HAVE BEEN ANY DIFFERENT HAD WE OR DEPARTMENT ENJOYED A LESS SHALLOW KNOWLEDGE OF FRENCH LAW.

2. IT SEEMS WE FAILED TO MAKE CLEAR TO DEPARTMENT THAT AVOCAT GENERAL IS NOT PUBLIC PROSECUTOR IN U.S. SENSE OF WORD. HE IS FREE TO EXPRESS ANY OPINIONS HE WANTS WITHOUT REGARD TO WHETHER THEY MAY BE CONSIDERED TO HELP OR HURT ONE OR ANOTHER OF PARTIES CONCERNED. IN CONVERSATION MARCH 24, FROMONT OF JUSTICE MINISTRY'S EXTRADITION DEPARTMENT INFORMED CONSUL GENERAL THAT HIS MINISTRY CAN GIVE AVOCAT GENERAL BINDING WRITTEN INSTRUCTIONS, USUALLY LIMITED TO PROCEDURAL MATTERS, SUCH AS WHETHER TO PRESENT A CASE. HOWEVER, ONCE IN
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COURT, AVOCAT GENERAL IS FREE TO SPEAK AS HE WISHES

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(OLD FRENCH EXPRESSION: "PLUME SERVE - PALABRE LIBRE". "THE PEN IS BINDING; THE WORD IS FREE".)

3. ROBERT SCHMELCK, DIRECTOR OF CABINET OF MINISTER OF JUSTICE, IN CONVERSATION TODAY WITH CONSUL GENERAL AND POLITICAL COUNSELOR, MADE SAME POINT, ADDING THAT THESE DAYS AVOCATS GENERAUX SHOWED EVEN MORE INDEPENDENCE THAN IN PAST.

4. GIVEN AVOCAT GENERAL'S ABSOLUTE FREEDOM OF ORAL EXPRESSION, WE DO NOT UNDERSTAND WHY DEPARTMENT THOUGHT JUSTICE MINISTRY WAS ABLE OR OBLIGED TO TELL US WHAT HE WAS GOING TO SAY. IN FACT, IT IS NOT INCONCEIVABLE THAT HE HIMSELF DID NOT KNOW BEFORE TRIAL WHAT KIND OF OPINION, IF ANY, HE WOULD EXPRESS. IN ANY CASE, OPINION OF AVOCAT GENERAL HAS NO BINDING EFFECT AND IS FREQUENTLY IGNORED BY JUDGES.

5. NOTWITHSTANDING WHAT IS SAID IN FOREGOING PARA-GRAPH, AND PURSUANT TO DEPARTMENT'S INSTRUCTIONS, WE HAVE EXPRESSED CONCERN AT HIGH LEVELS OF JUSTICE AND FOREIGN MINISTRIES THAT AVOCAT GENERAL TOOK POSITION CONTRARY TO OUR INTERESTS AND THAT WE WERE NEVER ADVISED THAT HE WOULD DO SO. FRENCH KEPT COMING BACK TO POINT THAT HE IS FREE TO SAY WHAT HE WANTS. JUSTICE MINISTRY OFFICIALS DID NOT REVEAL TO US NATURE OF WRITTEN INSTRUCTIONS TO AVOCAT GENERAL. WE DID NOT SEE FIT AT THIS TIME TO ASSERT A RIGHT TO KNOW THEIR CONTENT, ALTHOUGH WE DID EXPRESS OPINION THAT WE SHOULD HAVE BEEN KEPT BETTER INFORMED.

6. WHEN WE TOLD SCHMELCK WHAT AVOCAT GENERAL HAD SAID IN COURT, FORMER REMARKED THAT IN HIS OPINION LATTER HAD MADE WRONG ARGUMENT. SCHMELCK THOUGHT HE SHOULD HAVE STUCK EXCLUSIVELY TO POLITICAL ARGUMENTS WHICH FLOWED FROM DOSSIER ITSELF, E.G., FACT THAT HOLDER ASKED TO BE RECEIVED BY BLACK PANTHERS IN ALGIERS AND FACT THAT HIJACKERS CARRIED NO WEAPONS. (SCHMELCK THOUGHT THAT COMMON CRIMINALS WOULD MORE LIKELY HAVE BEEN ARMED, A DUBIOUS ASSUMPTION IN OUR OPINION).
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7. AS DEPARTMENT POINTS OUT, NEITHER FOREIGN NOR JUSTICE MINISTRIES EVER NOTIFIED US THAT OUR DOCUMEN-TATION WAS INCOMPLETE. PRESUMABLY THIS WAS BECAUSE THEY DID NOT THINK IT WAS. FROMONT SAID YESTERDAY THAT HE THOUGHT OUR DOCUMENTATION HAD BEEN COMPLETE. OPINION OF AVOCAT GENERAL THAT IT WAS NOT COMPLETE APPARENTLY WAS PERSONAL ONE.

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8. LAST SENTENCE OF PARAGRAPH 4 OF REFTEL IS

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INFO OCT-01 EUR-12 ISO-00 SCA-01 JUSE-00 SCCT-01 CIAE-00

INR-07 NSAE-00 FBIE-00 /024 W
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P 260921Z MAR 75
FM AMEMBASSY PARIS
TO SECSTATE WASHDC PRIORITY 7856

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INCORRECT. JUSTICE MINISTRY NEVER ADVISED EMBASSY
THAT EVIDENCE RE POLITICAL OFFENSE SHOULD NOT BE
INCLUDED WITH DOCUMENTATION: CONSUL GENERAL DISCUSSED
WITH MME. BACRO (EMBTEL 5347) PROS AND CONS OF PRESENT-
ING CERTAIN MATERIAL SUPPLIED BY FBI ON BLACK PANTHER
PARTY ON HOLDER'S AND KERKOW'S BACKGROUND,
AND ON THEIR NON-ASSOCIATION WITH ANGELA DAVIS. MME.
BACRO WAS NOT TERRIBLY IMPRESSED WITH MATERIAL AND
EXPRESSED SOME RESERVATION ABOUT ITS USEFULNESS.
HOWEVER, SHE MADE IT QUITE CLEAR THAT EMBASSY WAS AT
LIBERTY TO SUBMIT IT FORMALLY THROUGH FOREIGN OFFICE.
CONSUL GENERAL ACCEPTS FULL RESPONSIBILITY FOR WITH-
HOLDING IT FOR CONTINGENCY USE. AS IT TURNED OUT,
BLACK PANTHERS WERE NOT FACTOR IN MARCH L7 HEARING
(HOLDER EVEN VOLUNTEERED THAT HE WAS NOT MEMBER).
WHILE HOLDER MENTIONED ANGELA DAVIS AT BEGINNING OF
HEARING, DEFENSE LAWYERS QUICKLY DROPPED HER TO CON-
CENTRATE ON "DESTINATION HANOI" ARGUMENT WHICH KERKOW
WAS QUICK TO HELP THEM WITH. INFO ON FUGITIVES'
LACK BACKGROUNDS WAS JUDGED BY EMBASSY TO BE
POTENTIALLY MORE USEFUL TO DEFENSE THAN TO US.

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CONSIDERING COURSE HEARING TOOK, PERHAPS WE WOULD BE INCLINED PARTIALLY TO MODIFY THIS JUDGMENT IN RETROSPECT.

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9. YESTERDAY CONSUL GENERAL AND POLITICAL COUNSELOR ASKED NOEL MUSEUX, ACTING LEGAL ADVISER AT FOREIGN OFFICE (DE LA CHARRIERE IS IN GENEVA), ABOUT ARTICLE VI OF 1970 AMENDMENT TO EXTRADITION TREATY. MUSEUX SAID THAT LANGUAGE ON MUTUAL LEGAL ASSISTANCE WAS INSERTED AT REQUEST OF FRENCH TO OBVIATE PREVIOUS PRACTICE WHEREBY THEY HAD HAD TO HIRE PRIVATE LEGAL COUNSEL. NOW THEY ARE REPRESENTED BY U.S. ATTORNEY GENERAL, AN ARRANGEMENT WHICH THEY PREFER. WE TOOK OCCASION TO EXPRESS STRONG DISAPPOINTMENT THAT FRENCH ATTORNEY GENERAL DID NOT REPRESENT OUR INTERESTS IN SAME WAY, ADDING THAT WE WOULD HAVE BEEN DELIGHTED TO HAVE BEEN ABLE TO HIRE A COUPLE OF SMART FRENCH LAWYERS TO REPRESENT US IN HOLDER CASE.

10. WE POINTED OUT TO MUSEUX OBVIOUS INEQUITIES IN SITUATION WHERE DEFENSE HAD BENEFIT OF LEGAL COUNSEL AND WE HAD NO MEANS OF REFUTING DEFENSE ARGUMENTS IN COURT. IT SEEMED TO US, WE SAID, THAT ACCUSED COULD ALLEGE ANY KIND OF POLITICAL MOTIVATION THEY WANTED WITHOUT BEING EFFECTIVELY CHALLENGED BY AVOCAT GENERAL OR ANYONE ELSE AND, IF COURT SHOULD SO DECIDE, WITHOUT ALLOWING US TO PRESENT SUPPLEMENTARY EVIDENCE TO REFUTE ALLEGATIONS.

11. MUSEUX EXPLAINED THAT FRENCH JURISPRUDENCE GOVERNING EXTRADITION WAS RELATIVELY NEW, DATING TO 1927 LAW. BEFORE THAT EXTRADITION CASES WERE DECIDED BY EXECUTIVE FIAT. HE SAID THAT EVEN TODAY MINISTRY OF JUSTICE CAN BLOCK CASE FROM GOING TO COURT IF IT JUDGES EXTRADITION UNJUSTIFIED (HE DID NOT EXPLAIN APPARENT CONTRADICTION IN THAT ONCE CASE GETS TO AVOCAT GENERAL, EXECUTIVE APPARENTLY LOSES ALL CONTROL) MUSEUX NOTED THAT EXTRADITION HEARING WAS NOT A TRIAL AND DID NOT INVOLVE AN ADVERSARY RELATIONSHIP BETWEEN TWO PARTIES. HE ACKNOWLEDGED THAT UNDER FRENCH LAW THERE WAS NO-ONE WHO COULD BE SAID TO REPRESENT INTERESTS OF REQUESTING STATE.

12. MUSEUX STRESSED LIBERAL FRENCH ATTITUDES TOWARDS POLITICAL REFUGEES. HE MADE INTERESTING REMARK THAT

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PERSONS WHO HAVE ENJOYED STATUS OF POLITICAL REFUGEES
IN ANY COUNTRY HAVE RARELY BEEN EXTRADITED BY
FRENCH COURTS. WHAT MUSEUX SEEMED TO BE IMPLYING
THROUGHOUT CONVERSATION WAS THAT HIJACKING WAS ALMOST
PRIMA FACIE A POLITICAL CRIME.

13. THIS MORNING, WITH SCHMELCK, WE COVERED MUCH OF
SAME GROUND AS WE HAD WITH MUSEUX YESTERDAY, INCLUDING
POINTS MADE IN PARAGRAPH 10 ABOVE. SCHMELCK
EXPLAINED FRENCH SYSTEM ALONG LINES SIMILAR TO WHAT
WE HAVE HEARD FROM OTHERS. HE ALSO MADE POINT THAT
EVEN IF COURT SHOULD RULE AGAINST EXTRADITION, HOLDER
AND KERKOW WOULD PROBABLY BE SUBJECT TO TRIAL
IN FRANCE' UNDER HAGUE ANTI-JIJACKING CONVENTION.
HE CAUTIONED THAT THIS WOULD NOT BE AUTOMATIC, BUT HE
EXPRESSED BELIEF THAT CRIME WAS SUFFICIENTY'LY SERIOUS
TO MAKE TRIAL IN FRANCE FAIRLY CERTAIN.

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ACTION L-02

INFO OCT-01 EUR-12 ISO-00 JUSE-00 SCCT-01 SCA-01 CIAE-00

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P 260921Z MAR 75
FM AMEMBASSY PARIS
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14. WE ASKED SCHMELCK WHETHER WE COULD TAKE INITIATIVE
BETWEEN NOW AND APRIL 7 TO PRESENT ADDITIONAL EVIDENCE

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TO REFUTE DEFENSE ALLEGATIONS MADE AT MARCH 17
HEARING . HE SAID HE WOULD HAVE TO CHECK AND LET US
KNOW. HE SAW SOME DIFFICULTIES IN THAT DEBATE HAD
BEEN CLOSED AND ANY ADDITIONAL EVIDENCE WOULD HAVE TO
BE MADE AVAILABLE TO DEFENSE LAWYERS AS WELL
AS TO COURT. HE SAID HE WOULD DO HIS BEST. AS WE
LEFT HE SAID, HALF IN JEST, THAT HE HOPED THIS CASE
WOULD NOT HURT GOOD RELATIONS BETWEEN OUR COUNTRIES.

15. WE BELIEVE THAT TOP ECHELONS OF FRENCH GOVERNMENT
ARE WELL AWARE OF CONCERN AND FRUSTRATION WE SHARE WITH
DEPARTMENT AT POLITICAL EVOLUTION OF THIS PRECEDENT-
SETTING CASE OVER WHICH WE HAVE SO LITTLE INFLUENCE
(POLITICAL COUNSELOR VOICED OUR CONCERN ALSO YESTERDAY
TO DIRECTOR OF AMERICAN DESK). WE HOPE EXECUTIVE
BRANCH WILL DO WHAT IS WITHIN ITS POWER AT LEAST TO
GIVE US SOME CHANCE TO BE HEARD BEFORE FINAL DECISION
IS TAKEN. IT IS CONCEIVABLE ALSO THAT COURT DECISION
ON APRIL 7 MIGHT BE TO ASK US FOR SUPPLEMENTARY
INFORMATION. THEREFORE' WE SUPPORT DEPARTMENT'S EFFORTS
TO OBTAIN ADDITIONAL DOCUMENTATION (PARA. 5 REFTEL).
WE ARE NOT OPTIMISTIC THAT FAVORABLE DECISION WILL BE
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RENDERED IN THIS CASE, BUT AT LEAST WE BELIEVE WE HAVE
DONE AS MUCH AS WE COULD WITHIN CONFINES OF FRENCH
LEGAL PROCEDURES AND FRENCH SENSITIVITY TO POLITICAL
FACTORS WHERE HUMAN DESTINIES ARE AT STAKE.
RUSH

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